

JAN 14 2008

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SANDRA M. STICKNEY, individually
and as a Trustee,

Plaintiff - Appellant,

v.

INTERNAL REVENUE SERVICE,

Defendant - Appellee.

No. 04-16246

D.C. No. CV-01-03990-CRB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Argued and Submitted December 5, 2007
San Francisco, California

Before: B. FLETCHER, CANBY, and RAWLINSON, Circuit Judges.

Appellant Sandra Stickney (Stickney) challenges the district court's ruling that a transmutation of residential property interests from community property to tenancies in common constituted a fraudulent transfer.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Although it appears that the district court's ruling on the merits was supported by the record, the district court lacked jurisdiction because Stickney failed to establish that "[her] action falls within an unequivocally expressed waiver of sovereign immunity . . ." *Dunn & Black, P.S. v. United States*, 492 F.3d 1084, 1088 (9th Cir. 2007) (citation omitted).

1. The district court lacked jurisdiction over Stickney's quiet title action brought pursuant to 28 U.S.C. § 2410. *See Dunn & Black*, 492 F.3d at 1092 n.9 ("[A] plaintiff cannot seek relief for monies or property already in the hands of the IRS in a § 2410 quiet title action.") (citation and internal quotation marks omitted).

2. The district court also lacked jurisdiction under 26 U.S.C. § 7433, which applies only to the direct taxpayer and not to third parties such as Stickney. *See Allied/Royal Parking L.P. v. United States*, 166 F.3d 1000, 1003 (9th Cir. 1999).

3. For the same reason, 26 U.S.C. § 7432 did not confer jurisdiction. *See Soghomonian v. United States*, 82 F. Supp. 2d 1134, 1143 (E.D.Cal. 1999); *cf. Allied/Royal Parking*, 166 F.3d 1000 at 1003.

4. Finally, jurisdiction was lacking under 26 U.S.C. § 7426, as Stickney's action did not involve a wrongful levy or a substituted fund. *See Sessler v. United States*, 7 F.3d 1449, 1451-52 (9th Cir. 1993) (“[S]ection 7426 is not a broad grant of jurisdiction for suit brought by any third-party interest-holder; it only waives immunity when there’s been a wrongful levy.”) (internal quotation marks omitted); *see also United States v. Williams*, 514 U.S. 527, 537-38 (1995).

VACATED and REMANDED for dismissal.